K 1951

File No. O.L.R.C. Bom 51.

Part II

A **BRANCH**

Subject:— Opinions under the Bombay Land Revenue Code, 1879.

(for previous pps pl. see Part I)

P. 81 E

File No. O.L.R.C. Bom/51

Part II

Gen. 194 e.

21-A

contents.

Legal Department File No. O. L.R.C.Bom/51 Part II

Sr. No.	R.I. No. /O. No.	Subject	Pages.
		Opinions under the Bombay Land Revenue Code, 1879.	
1.	9973 22-6-1951.	Whether the lands which have been leased by the Khots of village Konzari can be resumed.	1 - 2
2.	10863 10-7-1951	Bombay Land Revenue Rules, 1921. Rules 81, 82 and 86A Application of rule 86 A.	3 - 6
3	10276 28-6-1951	Bombay Land Revenue Rules, 1921 Whether Rule 14A is retrospective.	7 - 8
4	11392 18-7-1951	Section 6 (1) and 16. The Ancient Monuments Preservation Act, 1904, Section 4. Legal ownership of the land bearing S.Nos. 360 and 361 of North Daskroi, Ahmedabad City which had been acquired for exposing the ornamental beauty of the Jumma Masjid.	9 - 10
5	11221 16-7-1951	Section 48(2). Levy of fine and non-agricultural assessment of revised rates for breach of conditions of sanad.	11 - 16

C O N T E N T S.

Legal Department File No. O. L. R. C. Bom/51 Part II

Sr. No.	R.I. No. / O.No.	Subject	Pages.
6	16027 2-8-1951 G.R.R.D. 628151 27-7-1951	Land Revenue Rules, 1921 Application of rule 14A (No copies for regions)	17- 20
7	11672 23-7-1951	Sections 61 and 187 Recovery of assessement and fine from unauthorised occupants.	21 -22
8	11873 26-7-1951	Sections 65 and 73 A Whether a lease of an agricultural land held by an occupant involves transfer of such land.	23 -24
9	12564 6-8-1951	Whether there is any legal objection to the interduction of survey and settlement in the two Thakrati Villages of Jamla and Chandisama and whether such action would in any way interfer with the rights of the Thakore of Pethapur.	25 - 26
10	17572 24-8-1951 G.R.R.D. 5494 10-8-1951	Lands B.S.D. Building control in respect of procedure regarding (No copies for regions).	27- 30

C O N T E N T S.

Legal Department File No. O.L.R.C.Bom/51 Part II

Sr. No.	R.I. No. / O. No.	Subject	Pages.
11	13268 18-8-1951	Whether Govt. should give thier consent to the raising of the loans by the Modern Education Society on the the security of the properties at Poona and Mahim which have been acquired and transferredto that society.	31 - 32
12	12700 7-8-1951	Levy of composition fee for constructing unauthorised structures.	33 - 36
13	13523 23-8-1951	Section 117 R. Extension of theperiod of settlements introduced in Merged Area of Baroda and three talukas of Ahmedabad District.	37 - 40
14	13094 14-8-1951	Section 66. Prevention of Ribbon Development.	41 - 42
15	13530 23-8-1951	Section 211. Cancellation of auction sale of land.	43 - 48
16	14076 1-9-1951	Bombay Land Revenue Rules Benefit of rule 86-A	49 - 50

C O N T E N T S.

Legal Department File No. O.L.R.C.Bom/51/ Part II

Sr. No.	R.I. No. /O.No.	Subject	Pages.
17	13619 24-8-1951	Whether Government's order cancelling the grant of land to Dr. Bhatia is justified.	51 - 54
18	13945 30-8-1951	Recovery of assessment from Madhya Bharat Government.	55 - 58
19	14144 4-9-1951	Whether the suggessions made by the Vile Parle Non- agricultural Assessment Defence committee that all orders leving non-agricultural assessment in Vile Parle should be cancelled as the assessment does not go to the public treasury, can be acted upon.	59 - 62
20	14015 31-8-1951	Standard rate of assessment in lieu of rate in Kind.	63 - 64
21	14683 15-9-1951	Sections 37 and 69 Grant of sole right of collecting and removing metal and sand from the bed of the river Mahajam to M/s Rasiklal & Co. by the Thakore of Vadgaon. Whether it would be legally feasible for Govt. to discontinue the monopoly.	65 - 66
22	14392 10-9-1951	Sections 38 and 61 alienated Application of tolicensed villages.	67 - 68

C O N T E N T S.

Legal Department File No. O. L. R. C. Bom./51 Part II

Sr. No.	R.I. No. /O. No.	Subject	Pages.
23	15545 29-9-1951	Eviction of Shri Gonsolves.	69 - 70
24	15702 4-10-1951	Section 216 (1) (iii) Inám village ~~up~~ puna of the former Sachin State Inamdar's liability to pay the salary of thePolice Patel.	71 - 74
25	15673 3-10-1950	Sections 118 and 211 Whether the order of the Assistant Collector making the award and the collector confirming it are ~~pa~~ proper.	75 - 76
26	16235 13-10-1951	Sections 3,37(2) and 64 Whether as a Khot Shri Dalvi was entitled to the alluvial land under KhotiAct and whether the enquiry under section 37(2) was superfluous.	77 - 78
27	16993 25-10-1951	Section 48(4) Penalty of for failure for breach of conditions. Reconsideration of Sey's opinion No. 8516 dated 30-5-1951.	79 - 82
28	262 20-10-1951 17114 26-10-1951	Section 56. Whether forfieture of land by Government from the mortgagor for non-payment of land revenue and subsequently restoring it to the mortgagee would revive the mortgage.	83 - 84

C O N T E N T S.

Legal Department File No. O.L.R.C.Bom/51 Part II

Sr. No.	R.I. No. /O. No.	Subject.	Pages.
29	15747 4-10-1951	Section 155 Sanction of Sale of auction	85 - 86
30	16840 23-10-1951	Whether it would be legally feasible to order the demolition of the ~~x~~ unauthorised stuctures errected by Shri Ratilal Sunderji on plot. No. 128E of the village Molygan in view of condition 6 of the sanad.	87 - 90
31	16276 15-10-1951	Section 105 and 55. Whether the combined assessment fixed under section 105 can be split up ~~x~~ into its components viz. soil and water assessment form timet-o time under section 55.	91 - 94
32	16428 5 16-10-1951	Section 46. Whether holder of the ~~xxtaxx~~ watan land is entitled to dispose of the sand brought by a sudden flood of the river on the watan land.	95 - 96
33	18341 17-11-1951	Do Do	97- 100
34	18158 15-11-1951	Government Agricultural Farm at Kabhoi-Exemption from assessment.	101 - 102
35	18635 21-11-1951	Review of its own order by Govt. Allowing unauthorised construction to stand on payment of fine.	103 - 104

C O N T E N T S.

Legal Department File No. O.L.R.C.Bom 61 Part II

Sr. No.	R.I. No. /O. No.	Subject.	Pages.
36	18782 23-11-1951	Eviction of Shri Gonsolves.	105-106
37	19010 27-11-1951	Baroda Land Revenue Rules — rule 269 dispute between the holders of lands in Ganpatpura and the holder of certain Wanta lands with regard to a nautral passage of water. Whether the remedy available under rule 269 of Baroda Land Revenue Rules would survive after the repeal of the said rules.	107-108
38	19157 29-11-1951	Section 66. Bombay Municipal Corporation Act. 1888, section 527A(2) Whether the collector can exercise powers under section 66 and levy fine in cases of unauthorised N.A. use of lands in the B.S.D.	109-110
39	19670 7-12-1951	Action under section 43.	111-112
40	19804 10-12-1951	Whether there would be any legal objection to reviving the rates of assessment which prevailed in Limdi State prior to 1924	113-114

C O N T E N T S.

Legal Department File No. O.L.R.C. Bom/51 Part II

Sr. No.	R.I.No. /O. No.	Subject.	Pages.
41	20470 24-12-1951	Bombay Land Revenue Rules Rule-86 A Whether merging of the graduated levy in the revision would be legally feasible.	115 -116
	51	Section 73 A Whether application of section 73A would be feasible where survey-settlements have already been introduced according to states Rules.	117-128
43	Sections 61 and 66 20668 28-12-1951	Section 61 and 66 Eviction of persons occupying unauthorised structures.	129 - 132
44	20732 29-12-1951	Section 66 Removal of unauthorised structures.	133 - 134
45	20733 29-12-1951	Do Do	135 - 138.

NKD 17/12/57

PHB 19/12

Office of the R.L.A.

It appears from the standing order No. 1701, dated 1st October 1900, at page 219 of the File that the lands were given to the Khots as usual on condition that they should be given permission to enjoy thep produce of the lands and pay Government assessment. These conditions clearly indicate that the proprietory reights of Government over these lands were not at all transferred to the Khots, nor were they given any higher rights than those which were absolutely necessary for the enjoyment of the produce of the lands. In other words, it appears that these waste lands were given to the Khots for cultivation subject to thepayment of Government assessment. Such grant would evidently be in the nature of a licence to enjoy the produce of the lands on payment of assessment. If this interpretation is correct, there would be no legal objection to Government revoking the licence and to resuming possession of the lands. If the Khots have incurred expenditure over improvements of the lands, in equity, they are entitled to reimbursement. It appears, however, desirable that notice should be issued to these Khots calling upon them to show cause why these grants should not be revoked and lands resum resumed by Government. Each case should be considered separately and before any action is taken the record of each case should be submitted to the Legal Department for scrutiny of the evidence produced by the Khots.

o/c Sd/- 21/6
Remembrancer of Legal Affiars.

U.R. to R.D.No. 9973, dated the 22nd June 1951.

C.G.R. 27-6

Legal Department.

~~Office of the R.L.A.~~

Seen and returned. In view of what the Revenue Department says that the rates applied to the area were standard rates, Rule 86A would be applicable.

o/c. Sd/-
Additional Secretary to Government.

U.R. to R.D. No. 10863 , dated the 10th July 1951.

C.G.R. 27-6

C 5

Office of the R.L.A.

The view taken by the Collector, ~~Nasik~~ Nasik, is correct. Rule 14A of the Land Revenue Rules is not retrospective. That Rule will apply to cases where non-agricultural assessment is to be fixed, but where non-agricultural assessment is fixed prior to 29-10-1925, on which date that Rule (Rule 14 A) came into operation, the assessment can be revised only when the period for which it has been fixed expires and when such assessment is to be revised Rule 14-A will have to be complied with. It follows, therefore, that Rule 14-A will not apply to cases where non-agricultural assessment has been already fixed for a definite period prior to 29-10-1925. However, there will be no objection to the rounding off of non-agricultural assessments, in accordance with Rule 14-A in cases where such rounding off will be downwards, that is to say, lead to a reduction of the non-agricultural assessment.

o/c Sd/- 27/6

Remembrancer of Legal Affairs.

U. R. to R.D.No. 10276, dated the 28th June, 1951.

C.G.R. 27-6

C 5

Office of the R.L.A.

In this case S.Nos. 360 and 361 of North Daskroi were notified for acquisition under the Land Acquisition Act, 1894, as being required for the preservation of the Jumma Masjid, a protected monument. Under section 16 of that Act, on the Collector's taking possession of the land, the same vests absolutely in Government free from all encumbrances. It is true that a part of the cost of the acquisition of the two pieces of land was paid by the Government of India; but that was done as a grant-in-aid merely to overcome the technical difficulty caused by the proviso to sub-section (1) of section 6 of the Act. The major portion of the compensation came from the Jumma Masjid Fund. The Collector of Ahmedabad in his capacity of the Commissioner of Monuments has, under sub-section (3) of section 4 of the Ancient Monuments Preservation Act, 1904, been constituted the grardian of the monument. Sub-section (4) of section 4 of that Act provides that when the Commissioner has accepted the guardianship of a monument under sub-section (3) the owner shall, except as expressly provided in the Act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof. There is nothing in the Act to show that the ownership has passed on to the Collector. The Collector himself has stated in his letter dated 23.6.1961 that he has merely assumed the guardianship of the Masjid and has not acquired any other rights. In these circumstances the legal ownership of the mosque vests in the Wakf Committee and the lands in question should therefore be entered in the name of the Committee in the property register. The view taken by the Director of Archieves is not correct.

c/c sd/-

o/c. Sd/- 17/7

Remembrrance of Legal Affairs.

U.R. to R.D.No. 11392 dated the 18th July 1951.

C.G.R. 27-6

C 5

Office of the R.L.A.

The first question for R.L.A's consideration is whether section 48(2) of theBombay Land Revenue Code can in thepresent casexxx be resorted to and non-agricultural assessment revised and fine levied on the occupant of the lands. Condition (2) of the Sanad issued to the occupant in the case provides:

"The applicant shall use the said plot only for building purposes of the nature specified in condition (3) of this Sanad."

Condition (3) states:

"The applicant shall within three years from the date hereof, erect and complete on the said plot building purposes (ginning factory) as per Prant E.D.'s order dated 29.5.1928 of a substantial and permanent description and shall in regard there to duly comply in every respect with the building regulations contained in clauses, &c., of the second Schedule hereto."

Unfortunately, the Second Schedule was not properly amended so as to conform with conditions (2) and (3) of the sanad. Condition 5 in the Second Schedule provides:

"The building erected on the said polt shall by used for residential purposes only."

and condition 6 states thatno building erected on the said plot shall be used as a shop or a factory or as a place for carrying on an offensivetrade. These conditions are obviously inconsistent with conditions (2) and (3) of the sanad. Schedule II appears to contain conditions which are ordinarily inserted in a sanad when conversion of agricultural land is permitted for residential purposes. The condition in a portion of thesanad regaring the use of the

use of theplot for a ginning factory being express and specific will not be altered or over-ridden by general conditions in Schedule II. Condition (6) of the Sanad provides:

> "The Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, direct the removal or alteration of any building or structure erected or used contrary to the provisions of this grant within a time prescribed in that behalf by the Collector, and, on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from the applicant as an arrear of land revenue."

It is true that condition (7) in the sanad also says that save as herein provided the grant shall be subject to the provisions of the said Code. But the sanad itself does not contain any provision for forfeiture of the occupancy or the eviction of the occupant. The only penalty which is provided for is that which is set out in condition (6) of the sanad, i.e., the removal and alteration of the structure. Section 48(4) would have no application to the present case. Although it is said that the building shall be used for a ginning factory; there is no provision in the sanad prohibiting the use of the land for any purpose as was in the case which was decided by the Privy Council in the Province of Bombay v. Hormusji Manekji (50 B.L.R. 524). It is not, therefore, permissible for the Collector to forfeit the occupancy or evict the occupant under section 48(4) of the Bombay Land Revenue Code.

2 The second question for R.L.A.'s consideration is whether the revised assessment can be levied provisionally pending the application of standard rates to the area under rule 82 of the Bombay Land Revenue Rules. Rule 87 provides that "the period for which the non-agricultural assessment is to be fixed shall

Legal Department.

It is possible to recover from unauthorized occupants assessment and fine under section 61 of the Land Revenue Code. These can be recovered as arrears of land revenue (see section 187).

O/c Sd/-

Additinal Secretary to Government.

U. R. to R.H.D No. 11672 dated the 23rd July 1951.

C. G. R. 28-6-

C 5

Office of the R.L.A.

In his order dated 8th June 1950 the Commissioner, C.D. has held that inasmuch as a tenant of a lnad is not permittedt o apply for permission under section 65 of the Land Revenue Code on the groundof his being not an occupant, the transfer of the occupancy under section 73A sub-section (1) would not include the lease of such occupancy. This reasoning and the conclusion of of the Commissioner, C.D. is not correct. Section 65 of the LandRevenue Code permits only an occupant to apply for permission to covert the agricultural land to a non-agricultural purpose. 'Occupant' as defined in section 3 clause (xvi) does not include a tenant. Obviously therefore a tenant not being an occupant cannot apply for permission under section 65. The purpose of section 65 is entirely different from the purpose of section 73A. Section 73A prohibits transfer of occupancies without the previous sanction of the Collector. 'Occupancy' as defined in section 3 clause (xvii) means a portion of land held by an occupant. Importing this definition into section 73A it would be apparent that lands held by occupants cannot be transferred without the previous sanction of the Collector. The lease of a land is a transfer of a right to enjoy such land. (See section 105 of Mulla's Transfer of Property Act). Consequently, the lease of an agricultural land held by an occupant involves transfer of such land. Such transfer would be in contravention of section 73A if it it be without the previous sanction of the Collector. The view taken by the Commissioner, C.D. is not correct.

o/c Sd/- 25/7
Remembrancer of Legal Affairs.

U.R. To R.D.No. 11873 , dated the 26th July 1951.

C, G.R. 28-6-

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether thre is any legal objection to the introduction of survey and settlement in the two Thakrati villages of Jamla and Chandisana and whether such action would in any way interfere with the rights of theThakor of Pethapur.

2. The Thakor of Pethapur in his petition at pp. 151-159 ante contends that the two villages of Jamla and Chandisana are Giras wanta villages over which he has full proprietory rights: and that Government cannot introduce survey and settlement in wanta lands. The Thakor further states that these villages have been recognized as of his full ownership under Article 3 of the agreement entered into by him with theRuler of of Baroda in 1948. The villages are nothing more than villages in respect of which the Thakor did not pay any land revenue. Government has not as yet decided to what extent the right should be recognized. But in any case it would be quite competent for Government, in view of section 216 of the Bombay Land Revenue Code, 1879, to introduce survey and settlement in these villages. This also appearsto bethe basis of the Baroda Government order dated 25th Junuary 1949 (p.33) directing the introduction of survey and settlement in Thakarati Ankadia villages.

o/c Sd/- 4/8

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12664 , dated the 6th August 1951.

C.G.R. 28-6-

C 5

Legal Department.

The Government had acquired certain property in Poona for the Modern Education Society and transferred it to the Society subject to certain conditions. Some property also is being acquired at Mahim, Bombay, for that Society. The Society now proposes to raise a loan on the security of the property at Poona and also on the security of the property which is being acquired at at Mahim. The question raised for the R.L.A.'s consideration is whether Government should give their consent to the raising of the loans on the security of the properties at Poona and Mahim.

2. As far as the property at Mahim is concerned, it has not yet been acquired and handed over to the Society. The question of giving consent for the raising of a loan on the security of that property may, therefore, be considered after the property is transferred to the Society.

3. As regards the property at Poona, the sanad granted to the Society does not contain any restriction on alienation but only a restriction on the user thereof. As such, no consent of Government is strictly speaking necessary for the raising of the loan on the security of the property. However, as the Society has approached Government, and if the Government are inclined to give the consent, they may inform the Society that their consent to the raising of the loan should not be treated as a waiver of any of the conditions of the Sanad.

4. It is not known whether the Society has been given any building grants by Government. If they have been given any such building grants, then the Society may have executed a trust deed transferring the property

the property to Government, thelatter holding theproperty in trust to permit the Society to use it for its purposes. If that is the case, the matter will require a further consideration in the light of thetrust deed. The R.D. may consult E.D. and theSociety and call for the necessary information in this regard before passing any final orders in the matter.

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 13268 datedthe 18th August 1951.

C.G.R. 28-6

C 5

Shri Kalani was granted N.A. permission in respect of S.No. 237 A /1-B of Deolali under the Collector of Nasik's Order No. L.N.D.S.R.-II-24, dated the 10th August 1935 for construction of a building according to the plan approved by the Collector. A Sanad in form M was issued to him on 11-11-1937. Shri Kalani however anauthorised by constiructed seven additional structures, a s shown in the Sketch dated 4-1-1950; considerably widened the latrines; and also constructed a third floor. This anauthorised structures were ~~dated~~ detected by the Special Mahalkari Deolali and in the inquiry proceedings that followed Shri Kalani in his statement dated 4-1-1950 requested that the structures may not be demolished; and that he was willing to pay composition fee in this matter. The Collector accordingly by his order No. L.N-B.S.R. II-34, dated 27-4-1950 regularised the anauthorised constructures on payment of a composition fee of Rs.10,000/-. Against this order Shri Kalani has appealed to the BR.T. inter alia on the ground that according to the Panchanama dated 21-4-1950 drawn by the special Mahalkari, Deolali the removal of the three structures would mean a loss of Rs. 650/- and as such a levy of Rs. 10,000/- as composition fee is unwarranted unjust and illegal. The R.D. is of opinion that in this case the Collector can charge composition fee only by a agreement but as Shri Kalani is demurring to pay it, the Collector's Order will have to be set aside, leaving him to take such further action as is permissible under the law. That Deptt. therefore proposes to inform the B.R.T. that Govt. does not desire to put in a written Statement and that the Tribunal may decide the case on merits. Before submission of the papers to H.M.R.D. they are re-

~~they are~~ referred t o the R.L.A.

C.G.R. 28-6-

C 5

Legal Department.

Seen and returned.

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 12700 dated the 7th August 1951.

C.G.R. 28-6

C 5

Legal Department.

15610/27-7-51.

Submitted with reference to R.D. note at pp.51-52 ante. The question discussed in this file is about the extension of theperiod of settlements introduced in the merged area of Baroda and three talukas of Ahmedabad District. ~~The Baroda and three talukas of Ahmedabad District.~~ The Baroda Government had issued an order on 26th June 1948 directing thepostponement by a year of the revision settlement of about thirty talukas the period of which was to expire on 1st August 1949. The R.D. has expressed the view that in virtue of section 117R of the Bombay Land Revenue Code, 1879, the settlement both in the merged talukas of Baroda and the three talukas of Ahmedabad would continue in force and it is not necessary for Govt. to issue specific orders extending the term. The R.L.A. is requested to advise.

C.G.R. 28-6
C 5

Legal Department.

Seen and returned. The view expressed by the Settlement Commissioner and the Director of Land Records in his u.r. at page 47 and in the R.D. note appears to be correct.

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 13523 dated the 23rd August 1951.

C.G.R. 28-6
C 5

Office of the R.L.A.

Prevention of Ribbon Development.

Land Revenue Code, 1879.

Section 66.

Survey No. 763 of Talegaon Dabhade measuring 1A. 21G. has been permitted to be used and for a non-agricultural purpose in the year 1901 and the n-a. assessment has been guaranteed for a period of 99 years. Niether the papers underlying the permission nor the sanad issued to the original holder is forthcoming. The area of the survey number has now been divided into several subdivisions and one Shri Shankar Pandurang Hundekari, who has purchased Hissa Nos. 1,2,5 and 6 has constructed a chawl partly in Hissa No.1 and Hissa No.2 and a pucca building in Hissa No1. The building in Hissa No.1 is at a distance of only 8 ft. from the road which branches off from the Talegaon-Chakan Road and the building is considered objectionable from the point of of view of the Ribbon Development. The Collector of Poona considers that it is not possible to take any action against the plot holder to prevent such construction and desires that the R.L.A. should be consulted as there are similar cases. The Revenue Department is of the view that the occupants should be asked to produce their sanads or the non-agricultural permission granted to them and if they are unable to do so they should be asked to execute fresh agreements so that at least further constructions can be controlled. The R.L.A. is requested to advise.

2. The Collector's view that no action can be taken under section 66 of the Land Revenue Code, 1879 is correct. As stated by Revenue

As stated by Revenue Department in its note at p. 5 ante, the holders of the plots may be called upon to produce their sanads x or permissions if copies thereof are not available in Government Records. But if the holders are unable to do so, it would not be possible for Government to force them to execute new agreements. Legislation may be necessary if the building ~~x~~ set-back rule is to be ~~made~~ made applicable to the persons whose sanads do not contain any such condition.

o/c Sd/- 13/7

Remembrancer of Legal Affairs.

U.R. R.D. No. 13094 dated, 14th August 1951.

CGR. 28-6-

C 5

Legal Department.

It appears that survey No. 107 of Malcometh was sold by public auction by the Mahalkari on 26-7-1940 and the auction sale was confirmed by the Collector of Satara on 11-11-1940. The auction purchaser Shri D'Souza was also put into possession of the land immediately. The Commissioner, C.D., in 1946, considered that the Collector's order confirming the sale of the land was bad on the following grounds:-

(a) The survey number is not fit for cultivation.

(b) The survey number is not suitable for constructing a building as its area falls short of the minimum area prescribed for building plots in Mahableshwar, viz., 3 acres.

(c) The survey number was sold by public auction in monsoon which was not the opportune time for holding sales of important sites when the bungalow owners are generally absent from the Hill Station.

(d) The Mahableshwar Golf Club had a right of easement over a portion of the survey number since 1881.

(e) Mr. D'Souza to whom the survey number has been sold cannot amalgamate it with survey No. 106 which he holds on lease from the Mahableshwar Deosthan Committee, as the tenures of these two survey Nos. viz., 106 and 107 are quite different.

on these grounds he proposed to cancel the Collector's order confirming the sale to Mr. D'Souza. But before doing so he asked the Collector to give 'show-cause' notice to Mr. D'Souza. On such notice being given to Mr. D'Souza, his Solicitors Messrs. Eastley Lam and Co., put in their contentions that any action cancelling the auction sale would be unlawful. These contentions along with the papers were submitted by the Collector to the Commissioner, C.D., but it appears that in the Commissioner's Office the papers of the case were found to have been lost and further proceedings for reconstruction of the

papers were taken. ~~In the meantime, the Commissioner's Office the papers of the case were found to have been lost and further proceedings for reconstruction of the papers were taken.~~

In the meantime, the Commissioner's Office was abolished and no final orders were passed by the Commissioner. The papers have now come to Government. R.D. proposes to cancel the auction sale under section 211 of the Land Revenue Code on grounds (a), (b) and (c) mentioned by the Commissioner and also on the ground that there was the essential mistake in holding the sale in monsoon when the bungalow-owners were generally out of the hill station, which affected the amount of the highest bid fetched by the auction in the case for want of bidders. The R.L.A. is requested to advise.

Under section 211 of the Bombay Land Revenue Code, the State Government or any revenue officer not inferior in rank to the Assistant or Deputy Collector or a Superintendent of survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case it shall appear to the State Government or the said officer that any decision or order or proceedings should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit. No. period of limitation is laid down for exercise of revisional powers under section 211 (Dattatreya v. Secretary of State, 31 Bom. L.R. p. 1235). It has, however, been held by the

Bombay High Court in 44 B.L.R. 405 and 46 B.L.R. 413 that section 211 has no applicati on to documents embodying the terms and conditi ons agreed to between Government and the occupant and it is, therefore, not competent for Government to cancel the sanad or agreement already made. In the present case it appears that no sanad has been granted to the auction purchaser. It would, therefore, be legally competent for Government to consider whether it would be justified after nearly 11 years to cancel the order on grounds (a), (b) and (c) mentioned above as proposed by the R.D. Unfitness of the land for cultivation or building purposes does not preclude the Collector from disposing of the land. It is for the bidders to consider whether such land should or should not be purchased. It is true that the monsoon was not an opportune time for the holding of auction sale of site at Mahableshwar. However, it does not appear that there are any Government orders directing that no such ~~leases~~ sales should be held during the monsoon.

cancel the order of the Collector confirming the sale on the ground of its impropriety. It is however for Govt to

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 13530 dated the 23rd August 1951.

C.G.R. 23-6

C 5

Legal Department.

The proposal of the Deputy Secretary, Revenue Department, would not be legally feasible. The benefit of rule 86A of the Bombay Land Revenue Rules accrues to the occupant on the non-agricultural assessment being revised and increased. Consequently, if the non-agricultural assessment now revised is again revised in 1953 and increased, the benefit of the rule 86A cannot be denied to the occupant. There is no provision in the Bombay Land Revenue Code or the Rules thereunder empowering Government to impose a condition that the benefit of the graduated levy under rule 86A will be merged into the revision that may be made thereafter, that is to say, in 1953, as proposed in this case. Consequetly, the parties would be entitled to claim fresh benefit of rule 86A treating the revision in 1953 as a fresh revision provided the non-agricultural assessment is increased in the fresh revision.

o/c Sd/-

Additional Secretary to Government.

U; R. to R.D. No. 14076 dated the 1-9- 1951.

CGR. 28-6

C 5

Legal Department.

The conclusion of the Collector that the whole transaction is malafide is correct.

2. Admittedly the land was held by Mansing Rupa on new tenure and consequently, it could not be alienated without the previous sanction of the Collector. Mansing made an application to the Mamlatdar on 30th November 1945 stating that he had sold the land to Magan Bhatia for a sum of Rs. 200/- as he was in need of money. Beyond the bare statement of Mansing there is nothing on record to prove the sale transaction ~~xxxxrealxthere~~ should ~~xevidentlyxbexx~~ between Mansing and Magan Bhatia. If the transaction was real there should evidently be a registered sale-deed for Rs. 200/- but it is not forthcoming. Magan Bhatia's statement does not appear to have been taken in this respect. If Mansing had sold the land and received the consideration, he had no more interest in the land. Ordinarily, there is no a reason why he should have given an ~~unauthorizedx~~ intimation of the sale to the Mamlatdar when he stood to lose nothing or gain nothing. Usually such unauthorised alienations are detected only after an enquiry. Dr. Bhatia made an application for the grant of this land on 29th January 1946, that is, two days before the land was actually forfeited on the intimation given by Mansing. In that application he had stated that the land was a waste-land. In fact the land was not a waste-land The statement that the land was a waste-land appear to have been made by Dr. Bhatia on the assumption that it was already forfeited on the ground of its being alienated without the consent of the Collecto

~~concent of the Collector~~ i.e. on the application made by Mansing Rupa to theMamlatdar on 30th November 1945. The Court Fee stamps affixed to both the applications the one made by Mansing on 30-11-1945 requesting that the Khata standing in his name may be transferred to that of Magan Bhatia and the other made by Dr. Bhatia on 29-1-1946 for the grant of the land-- were issued on one and the same date that is 29th November 1945. This gives clue as to how the idea of taking the land away from Mansing Rupa and granting it to Dr. Bhatia must have originated. Further, even after the forfeiture of the land it is reported that it was offered to Mansing Rupa and he declined it. It is very surprising that an agriculturist whose land was forfeited should have declined to accept it though it was offered to him. If the sale transaction were really genuine, Mansing Rupa, who had already pocketed Rs.200/-, should have ordinarily jumped at the idea of acceptance of the land when it was offered to him. Considering all these circumstances together and reading between the lines the reasonable conclusion appears to be that the application from Mansing to the Mamlatdar dated the 30th November 1945 must have been taken from him either under an inducement or under a misrepresentation by Dr. Bhatia, and the forfeiture and grant of the land to Dr. Bhatia must

~~Dr. Bhatia with must~~ have been manoeuvred by Dr. Bhatia with the assistance or connivance of the officers concerned. The whole transaction being shady, the Government's order cancelling the grant of land to Dr. Bhatia appears to be justified.

o/c. Sd/-

Additional Secretary to Government.

U.R. to R.D. No., 13619 dated the 24th August 1951.

C.G.R. 28-6

C 5

R.T. No. 16312
6/8/57

pp. 5-9 ante. Attention is invited to R.L.A's opinion No. 3518 dated 27-2-51 in which it was recommended to the R.D. to adopt one of the following alternatives: -

(1) if the Madhya Bahrat Government was not agreeable to rectification of the Sanad, this Government should file a suit for the rectification of the existing sanad under section 31 of the Specific Relief Act, 1877; or

(2) in view of the provisions of section 211 of the Bombay Land Revenue Code, 1879, the proper amount due since 1922 may be recovered from the Madhya Bharat Government.

As regards the second alternative, the R.D. considers that it would be a very awkward situation if this Government is forced to take coercive measures against the Madhya Bharat Government and hence sought advice of the P.& S.D. The Chief Secretary remarks: -

p. 23 ante.

"I think, it is not correct to ask the Government of Madhya Bharat to pay the arrears. We would be fully justified in asking them to pay the correct assessment etc. from the year in which we addressed a communication to them in the matter. The position should be fully explained with this modification and a further effort made to settle the matter at ministerial level."

Office of the R.L.A.

The course suggested by theChief Secretary being equitable may be followed.

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 13945 dated the 30th August 1951.

C.G.R. 28 -6

C 5

Office of the R.L.A.

This is in connection with the representation made by the vile parle non-agricultural assessment Defence Committee (pages 205-x 215 ante) suggesting inter alia (i) that all orders levying non-agricultural assessment in Vile Parle should be cancelled as the assessment does not go to the public treasury; (ii) and that legislation should be undertaken for the abolitionof non-agricultural assessment which does not benefit the public treasury. The Committee is of the opinion that the property owners are sutidars and are exempt from payment of non-agricultural assessment and that as neither the Inamdar nor the Government has contributed towards the development of the lands, it is not proper that the land-holders should be made to pay non-agricultural assessment to the Trustees. The Under Secretary, Revenue Department observes that if Government can refrain from levying/recovering non-agricultural assessment in Vile Parle, the amount of compensation payable by Government to the Khots will be very substantially smaller than what will otherwise be. In view of this the R.L.A. is requested to advise whether the suggestions made by the Vile Parle Non-Agricultural Assessment Defence Committee can be acted upon.

2. One of the contentions put forth on behalf of the Vile Parle Non-Agricultural Assessment Defence Committee is that the levy and recovery of non-agricultural assessment in Vile Parle is unjust and should be abolished. This raises the question whether the State Government can refuseto levy the assessment now.

This point appears to have been concluded by the Privy Council decision in Consolidated Appeals Nos. 211 and 216 of 1938. In these appeals the Privy Council has held that survey settlement had been introduced in the village in question, that the levy of non-agricultural assessment by Government in the village was legal and that therefore the Trustees of the Wadia Trust are entitled to the non-agricultural assessment recovered by Government. In these circumstances it will not be ~~x~~ feasible to give effect to the suggestions made by the Committee.

3. Incidentally it may be pointed out that the ~~Xxxx~~ Salsette Estates (Land Revenue Exemption Abolition) Bill, is likely to be enacted into law in the near future. That legislation would extend also to Vile Parle and Juhu. When that legislation comes into force all lands in the village except the lands falling under clause 3(3) of the Bill will be liable to payment of land revenue in accordance with the Bombay Land Revenue Code. All lands used for non-agricultural purposes will ~~be~~ be liable to non-agricultural assessemnt.

o/c Sd/- 31/8
Remembrancer of Legal Affairs.

U.R. to R.D. No., 14144, dated the 4-9-1951.

C.G.R. 28-6-

C 5

Legal Department.

Bombay Land Revenue Code.

Standard rates of assessment in lieu of rate in kind.

The view taken by the Settlement Commissioner is correct. Government has no legal power to sanction the application of the standard rates of assessment though agreed to by the Mahagirdar and the occupants. The only course that can legally be followed by Government would be to introduce the Survey Settlement and pending such settlement it would be open to the parties by agreement to adopt the standard rates of assessment, in lieu of the one-fourth of the total produce of the land as land revenue. That would not require the sanction of Government.

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D. No. 14015, dated the 31st August, 1951.

C.G.R. 28-6

C 5

Office of the R.L.A.

By the agreement entered into by Messrs. Rasiklal Chhotalal & Co. on 17th November 1939 with the Thakor of Vadgaon and subsequently amended by the agreement dated 8th May 1942, the Company was granted the sole right of collecting and removing metal and sand from the bed of the river Mahajam for a period of 21 years. The Company had agreed to pay a royalty of Rs. 750/- per year for the first 11 years and Rs. 951/- per year for the remaining period. Under section 37 of the Bombay Land Revenue Code, 1879, the river bed now vests in the Government of Bombay, and under section 69 the right of Government to mines and mineral products in all unalienated land is reserved to Government. This right cannot be disposed of without the sanction of the State Government (vide rule 30 of the Land Revenue Rules). The grant of the sole right of removing metal to Messrs. Rasiklal & Co. being against public policy should not be recognised by the State Government. However there would be no objection to allowing the company to collect and remove the metal during the remaining peiod of the grant provided such concession is also allowed to other persons applying for it. Government may therefore recognise this right of the Co. subject to its agreeing to other persons collecting metal from the river bed. Government may in that case agree to accept a reduced amount of the fee payable by the Company.

o/c Sd/- 14/9

Remembrance of Legal Affairs.

U.R. to R.D. No. 14683, dated the 15th September 1951.

C.G.R. 28 -6

C 5

Legal Department.

The view taken by the Revenue Department is correct (cf. R.L.A's opinion No. 5736, dated 19-6-1948). It is well settled that sections 38 and 61 of the Bombay Land Revenue Code have no application to alienated villages or lands (Vinayakrao vs. Secretary of State, 23 Bom. 39).

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D. No., 14392, dated the 10th September 1951.

C.G.R. 28-6

C5

Office of the R.L.A.

Eviction of Shri Gonsalves

Bombay Land Revenue Code, 1879.

The land does not wholly belong to Government and in the circumstances it appears that it would not be possible for Government to take steps for evicting Shri Gonsalves under the Land Revenue Code. If it is proposed to evict him, a suit will have tobe filed in a civil court by both the Co-owners who will have to sue jointly (Gour's Law of Transfer of Property, p. 523).

o/c Sd/- 28/9
Remembrancer of Legal Affairs.

U.R. to P. & s.D.No. 15545, dated the 29th September 1951.

C,G.R. 23-6

C 5

L.D.R.I.No. 19471/51.

Puna is an Inam Village of Class II of the former Sachin State. H.H. the Nawab of Sachin holds the largest share in the village by a private purchase of the share of a deceased Inamdar made in 1908. The Inamdars pay Rs. 1214-2-0 as Jude to Govt. plus local funds. An amount of Rs. 18206-8-0 is being treated as nuksan. The Inamdarsrecover the land revenue amounting to Rs. 19421/-. The village was surveyed and settled during the state regime. Priort o merger it appears, there was a revenue and police patel who was paid by the Inamdars at Rs. 120/- per year. The Inamdars have now appointed a talati at the village but he does not stay at the village permanently as he is not given sufficient remuneration by them. They have not appointed a revenue patel at the village, though it is necessary to do so. It also appears that the Collector Surat, by his order dated 12-7-49 as modified by his order dated 16-9-49 appointed one Shri Jivanbhai Nathabhai as Police Patel with effect from 16-7-49. He has not received his remuneration and it appears that the Mamlatdar Chorasi has served a notice on the Indmdars to pay the remuneration due to thepatel for the period 16-7-49 to 31-1-51 at the rate of Rs. 224 per annum. The Inamdar (H.H. thex Nawab) refutes any liability on thepart of the Indmdars to pay the remuneration of the patel, as a revenue or police patel has no concern with the Indmdars and they do no work for them. It is observed in the R.D. note that on the application of the L.R.Code, 1879 to the village, the settlement (effected prior to merger) will be deemed to have been introduced under chapter VIII or VIIIA of the Code, and consequently theprovisions of sec. 216(1) (III) will be applicable to the village and

~~to the village and~~ the Inamdars will be liable to pay the salary of the ~~Pkit~~ police patel. R.D. proposes to inform H.H. the Nawab of Sachin accordingly and also that the Mamlatdar's action was right. R.L.A. is requestedt o advise whether this view is correct.

Office of the R.L.A.

Seen and ~~xxx~~ returned.

The view taken by the Revenue Department is correct.

o/c Sd/- 3/10

Remembrancer of Legal Affairs.

U.R. to R.D,No. 15702, dated the 4th October 1951.

C.G.R. 28-6

C 5

Office of the R.L.A.

The Land Revenue Code, 1879 - Secs. 118, 211.

The Assistant Collector who made thee award and the Collector who confirmed that award not being either Survey Officers or Officers nominated by Government for the purpose under section 118 of the Bombay Land Revnue Code has no jurisdiction to ~~dx~~ fix the boundaries of the village. Consequently, the award made by the Assistant Collector and confirmed by the Collector is ~~xx~~ ultra vires. Strictly speaking, it is not necessary to set aside the award, it being passed without jurisdiction. However, Government may formally set aside the award under section 211 of the Bombay Land Revenue Code and direct a Survey Officer or nominate any officer to hold an enquiry and fix the boundaries under section 188 of the Code. Since the award passed by the Assistant Collector is ultra vires, it is not necessary that the matter should be referred to the Bombay Revenue Tribunal.

o/c. Sd/- 3/10

Remembrancer of Legal Affairs.

U.R.To R.D.No 15673 dated the 3rd October 1951.

C.G.R. 28-6

Legal Department.

By his order dated the 7th April 1947 the District Deputy Collector, Ratnagiri Division, has already directed that Shri Dalvi in his capacity as the occupant of the land on the bank of the river should be allowed the temporary use of the land under section 64 of the Bombay Land Revenue Code, 1879. The District Deputy Collector's order was based on the facts that the land in question was an alluvial accretion and not waste land as claimed by Shri Jakhi; and that Shri Dalvi was the occupant of the adjoining land. The question of his rights to the land as a Khot does not arise. A Khot-holder is an occupant within the meaning of section 3 of the Bombay Land Revenue Code. It may also be pointed out that section 39 of the Khoti Settlement Act, 1880 which has since been repealed did not exclude the application of section 64 of the Code to Khoti villages.

o/c. Sd/-

Additional Secretary to Government.

U.R. to R.D.No. 16235, dated the 13th October 1951.

C.G.R. 28-6

C 5

Office of the R.I.A.

In his opinion No. 8516, dated 30-5-1951 (pp.11.13 ante) the Additional Secretary had expressed the view that as the occupant of plot No.1054 of Malegaon, Shri Pawar, had committed a breach of the undertaking given by him to keep an open space of five feet all round the plot, it could not be said that there was an alteration in the purpose to which the plot was allowed to be put; and that therefore it would not be possible for the Collector to evict him from the plot under sub-section (4) of section 48 of the Bombay Land Revenue Code, 1879. In the first paragraph of that opinion the Additional Secretary had further expressed the view that the condition to leave a five feet open space around the plot could not be said a condition annexed to the tenure of the land, particularly when the penalty of forfeiture had been provided only for the breach of another condition viz. condition 3. The Collecotr of Nasik invites attention to Government Circular Revenue Department, No. 5887/33 dated 25-1-1938 and sug ests that the Additional Secretary's opinion conflicts with orders contained in that circular. In view of the Collector's letter the Additional Secretary is requested to reconsider his opinion and to state whether and if so what penalty can be imposed for breach of the conditions.

2. The Collector's reference in his letter dated 27-8-1951, with the orders contained in which he suggests to Government circular No. 5887/33, dated 25-1-1938, with the orders contained in which he suggests the Additional Secretary's Opinion No. 8516, dated 30-5-1951 conflicts does not appear to be correct.

The said circular draws a distinction between a condition to be imposed when permission to use agricultural land to non-agriculatural purposes is given and a condition to be annexed to the tenure. In this case Survey No. 1054 of Camp Malegaon was ~~xxxxxx~~ sold to Shri Pawar for the purpose erecting buildings. The conditions on which the grant was made are those stated at the end of the Kabulayat. It is true that condition 1 therein required the occupant to leave an open space of five feet all round the plot, but that was not the condition annexed to the tenure and there was no provision governing the breach of that condition. No penalty was laid down for breach of that condition. It does not therefore appear it would be possible to inflict a penalty of forfeiture for breach of condition No. 1 in the Kabulayat.

o/c Sd/- 24/1°

Remembrancer of Legal Affairs.

U.R. to R.D.No. 16993, dated the 25th October, 1951.

C G.R. 29-6

c 5

Legal Department.

Land Revenue Code, 1879 - section 56.

It appears that one Maganbhai Dahyabhai Chaudhari, an agriculaturist, had mortgaged with possession his land to one Bhukhandas Maneklal and in the Bardoli 'No-tax' coapaign, 1928, Shri Bhukhandas who was in possession of the land as mortgagee did not pay the Land revenue and consequently the land was forfeited. At the end of the campaign it appears that the land was restored by Government to Shri Bhukhandas. Maganbhai had made an application for the redemption of the land under the Bombay Agricultural Debtor's Relief Act. That application, it appears, has been dismissed by the Joint Civil Judge, Surat, on the ground that the mortgagor had no equity of redemption left inasmuch as the land having been forfeited under section 56 of the Bombay Land Revenue Code, the subsequent restoration of land by Government to the mortgages would not revive the previous mortgage. R.L.A. is requested to advise whether the view taken by the Joint Civil Judge, is correct.

2. It appears that the land was forfeited under section 56 of the Bombay Land Revenue Code for non-payment of land revenue and subsequently, as a result of Government Order No. 7159/33, dated the 14th September 1937, the land was restored to Bhukhandas Maneklal who was in possession of the land as mortgagee at the time of the forfeiture. As a result of the forfeiture under section 56 of the Land Revenue Code the mortgage became extinguished and the subsequent

~~became extinguished and the subsequent~~ restoration of the land to Bhukhandas would not revive the mortgage (Vedu vs. Kalu, 15 Bom. L.R. 82). The view taken by the Joint Civil Judge, Surat, is ~~the~~ therefore, ~~correct~~ legally correct.

o/c Sd/-
Additional Secretary to Government.

C.G.R. , 29-6-

C 5

Legal Department.

Sanction of sale by auction. Land Revenue Code, 1879. section 155.

Section 155 of the Bombay Land Revenue Code providesthat the Collector may also cause the right, title and interest of the defaulter in any immoveable property other than theland on which the arrear is due to be sold. This provision does not contemplate any regular or formal order of the Collector for asale of theproperty. It would be in compliance of this provision of the Collector directs theMamlatdar to sell the propert rty by auction. In the present case the Collector of Poona under his endorsement dated 4th March 1949, forwarded to the Mamlatdar of Poona city for necessary ~~xx~~ action andreport, thepapers received from the Assistant Registrar of Co-operative Societies, Poona, with a certificate for for recovering the amount under the award as an arrear of land revenue. Consequently, the endorsement of the Collector dated 4th March 1949 would be deemed to be a direction of the Collector to the Mamlatdar for sale of the property. It appears, therefore, that section 155 has been duly complied with. The Collector having already confirmed the sale, there appears no valid reason for setting it aside.

o/c Sd/-

Additional Secretary to Government.

U.R. to R.D.No. 15747 dated the 4th October 1951.

C.G.R. 29-6

Office of the R.L.A.

Under paragraph 7(B) in the Second Schedule to the Sanad granted to Shri Ratilal Sundarji the occupant is prohibited from erecting new structures on the plot without theprevious permission of the Collector. Condition 6 of the Sanad which prescribes the penalty provides inter alia that the Collector shall have power to demolish a building constructed in contravention of theterms and conditions of the sanad. It is true that in view of the decision of the Civil Judge, Senior Division, Kolaba, in Civil Suit No. 81 of 1948, which is under appeal at present, theR.D. issued orders in their circular No. 4808/49, dated 31-5-1950 that pending the result of the appeal in that suit, where eviction is sanctioned by Government the anauthorised structures s should not be demolished; but that they should be treated as Government property and leased out as such. As pointed out by theCollector of Thana howeverthese orders are not applicable in the present case. Caluse 6 of the Sanad dated 30-4-1939 granted to Shri Ratilal Sundarji specifically provides that theCollector shall have power to order demolition of buildings erected in contravention of the the terms and conditions of the sanad. According to condition 7(B) in the Second Schedule to the Sanad, it was incumbent on Shri Ratilal to obtain the previous permission of the Collector before erecting the structures. He not only did not obtain such permission but acted indefiance of the notice issued to him by the Mamlatdar. As pointed out by the R.L.A. in the concludi portion of his opinion No. 8540, dated 31-5-1951, if the sanad itself provides forthe removal of the unauthorized structures the decision of the Civil Judge, Senior Division, Kolaba, in theCivil Suit referred to above would have no application as the Sanad itself woul

~~Sanad itself would~~ constitute an agreement between the parties and it would be competent for Government to enforce the provisions thereof. For these reasons the proposal made in the note of the Under Secretary, R.D., dated 19-9-1951 appears to be legally feasible.

p/c Sd/- 22/10

Remembrancer of Legal ~~Affairs~~.

U.R. to R.D. No. 16840, dated the 23rd October 1951.

C.G. R. 29-6

C 5

The S.E. D.I.C. was directed that the water-rates on all the nine bhandaras on the Girna River in Kalwan, Malegaon and Baglan Talukas should be revised and should be made more rational. In his letter No. 10478, dt. 11-12-1950, the S.E.D.I.C. states that in accordance with orders in G.R.P. W.D. No. 5500/36 dt. 17-5-1944, out of the nine bhandaras the four bhandaras in Malegaon and Baglan talukas (serial Nos. 6 to 9) were to be charged combined assessment according to the revision settlement for a period of 30 years from 1942-43. He, therefore, suggests that the said bhandaras in Malegaon and Baglan talukas should be excluded from the revision of water rates and that the water rates on the bhandaras in Kalwan taluka should be revised to the extent of normal water rates on the Girna Canal sanctioned under G.R.P.W.D. No.929/36 dated 18-5-45. Regarding exclusion of bhandaras Nos. 6 to 9 in Malegaon and Baglan talukas for from the revised water rates, the Secy. p.W.D. remarks:-

P. P.- 5-7 ante

P. 5 = do —

P. 11 ante

> "In view of the express provision of sect. 105 of the Land Revenue Code, it seems to me that only ordinary land revenue assessment is guaranteed, and that water rate under sect. 55 of the Land Revenue Code or under the Irrigation Act can be increased or levied in addition, if the current combined assessment is governed by a guarantee."

The Settlement Commissioner and Director of Land Records, who was consulted on the points, however, is of a different opinion. His veiw is as follows:-

P. 13 ante

> "The assessment of 'ordinary land revenue'

refferedt o in section 105 of the Land Revenue Code includes t he assessment upon themeans o f irrigation as well, in respect of whichno rate is levi ed under section 55 of the Land Revenue Code or under the Bombay Irrigation Act, 1879 (vide the old sect. 101, now repealed and Chapter VIIIA of the Land Revenue Code). So, obviously, when the combined (soil and water) assessment has been fixed a t e settlement under the Land Revenue Code and guaranteed, it cannot be altered before the period of guarantee (i.e. Settlement) expires. However, sect. 117 of the Land Revenue Code provides for levy of additional land revenue (of course water assessment) during the term of settlement for additional advantages accruing to the land from water received - on account of irrigation works or improvements in the existing irrigation works ~~or improvements in the existing irrigation works~~ completed after t he settlement and not affected by o r at the expense of the holder of th e land and in respect of which no water rate is levied under the Bombay irrigati on Act, 1979. As such the existing combined assessment fixed under the Land Revenue Code and guaranteed for t he term of the settlemen t cannot be split up into its components viz. soil and water assessmnt from time to time under sect. 55 of the Land Revenue Code or the Bombay Irrigation Act as observed in t he P.W.D. note dt. 29-1-51, which can however, be done only at the time of the next revision settlement. In the circumstance, it may be submitted that the combined survey assessment imposed at the last settlement in 1942-43 in respect of the four Bhandaras from Bagland and Malegaon talukas ..... will have to be continued till the next revision settlement."

R.L.A. is requested t o advise whether the view expressed by the Settlement Commissioner and Director of Land Records is correct.

Office of the R.L.A.

Seen andreturned.

The view expressed by the Commissioner of Settlement and Director of Land Records and concurred in by the Revenue Department is correct.

o/c Sd/- 13/10

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 16276, dated the 15th October 1951.

Office of the R.L.A.

S.No.363/3 of Kalol was a Wantan land on the banks of Goma river. It is stated that it was washed away in 1927 and has been entered in the revenue record as pot Kharaba. It is true by mere diluvion the holder of the land would not lose his title thereto and the mere entry in the revenue record would not vest it in Government. It is, however, stated that every year the flood in the river brings sand on the site where the survey number originally existed. The question has arisen whether the holder of the Watan land is entitled to dispose of the sand so brought. Under section 46 of the Bombay Land Revenue Code, any alluvial land would vest in the holder of the alienated land. But alluvion means land which is added or formed by a gradual imperceptible and slow process. Sand brought by a sudden flood would not prima facie be alluvial land (see Nerendra vs. Achhaibar I.L.R. 28 All.647). Unless, therefore, it can be proved beyond doubt that the land is alluvial, the claim of the holder to dispose of sand from the site of the pot kharaba should not be admitted.

o/c Sd/- 16/10

Remembrancer of Legalm Affairs.

U.R. to R.D.No. 16425, dated the 16th October 1951.

C.G.R. 29-6

C 5

L.D.R.I.No. 22524 dt. 1-11-51.

Submitted with reference to the note of the R.D. at pp. 12-13- ante.

Attention is invited to the R.L.A's opinion No. 16425, dated 16-10-1951 at p. 11 ante.

It is urged that sec. 46 of the Bombay L.R. Code, 1979 mentioned in the R.L.A's opinion refers to liability to land revenue of alluvial land. The question of alluvian (of land) does not exist in this case, unless it is held that sand deposited (by floods) in a privately owned 'pot Kharaba,' is alluvial land which does not seem to be feasible. In this case, Govt. deliberately held that the Collr's action in declaring the land "as river Kharaba" was wrong and that the land was "pot kharaba". The R.L.A. has been requested to reconsider the matter.

C.G. R. 29-6

C 5

Office of the R.L.A.

If the sand which is being deposited is not alluvial land, no question of considering whether the holder of inam is entitled to it arises. There ~~is~~ are no grounds for the reconsideration of the opinion already given.

o/c Sd/- 16/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18341 , dated the 17th November 1951.

C.G.R. 29- 6

C 5

Legal Department.

Government
Extr Agricultural Farm
at Dabhoi.
Exemption from
Assessment.
------ -

All land is x liable to pay assessment to Government; but if any land belongs to Government as in the present case its liability to pay assessment would not arise. There would therefore be no legal objection to exempting the land in the present case from payment of assessment.

o/c Sd/-

Additional Secretary to Government.

U.R.to R.D.No. 18158, dated the 15th November 1951.

C.G.R. 29-6

C 5

Office of the R.L.A.

Land Revenue Code, 1879.

Review of its own order by Government.

By paying the fine and compromising the case, Shri Shah appears to have got the right to hold the property subject to the conditions already imposed on him and it would not be open to Government to impose additional conditions on him by reviewing its order.

o/c Sd/- 20/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18635, dated the 21st November 1951.

C.G.R. 29-6

C 5

Office of the R.L.A.

Eviction of Shri Gonsalves.

The Solicitors have not advanced any fresh ~~gax~~ grounds in their letter at page 413 ante to necessitate reconsideration of the previous opinion. From the Collector's report at page 385, it appears that their contention that Shri Gonsalves is a trespasser is not correct. Their statement that the Collector can evict all trespassers fr from any land is also not correct. The Collector is the officer concerned who will be taking steps to evict Shri Gonsalves and if necessary, Political and Services Department may direct the Solicitors to approach him in the matter and place their view before him to enable him to decide the matter.

o/c

Sd/- 22/11

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No. 18782 dated, 23rd November 1951.

C,G.R. 29-6

C 5

Office of the R.L.A.

In the Baroda State, the law corresponding to the Mamlatdar Court's Act was the Kabja Courts Act. The proceedings in question were not commenced under theKabja Courts Act but under theBaroda Land Revenue Rules. In the circumstances theprovisions of the Mamlatdar Courts Act would not be of any avail.

2. The order directing theThakore to remove the bund was passed on 11-7-48 i.e. during the Baroda regime; but from the appeal memo it is not clear which theThakore failed to comply with the order. In any casethe remedy available under rule 269 of the Baroda Land Revenue Rules did not survive aftert herepeal of the Baroda LandRevenue Rules.

o/c Sd/- 26/11.

Remembrancer of Legal Affairs.

To

The Parliamentary Secretary (Shri Babubhai Patel).

C.G. R. 29-6

C 5

Legal Department.

The view taken by the Revenue Department is correct. If an occupant uses the land for a building purpose without ~~xinx~~ complying with all the requirements of the Bombay Municipal Corporation and the by-laws made thereunder as provided in section 527A (2), he would be deemed to have unauthorizedly used the land for non-agricultrual purposes and be liable to the penalty under section 66 of the Bombay Land Revenue Code, 1879.

o/c Sd/-

Additional Secretary to Government.

U. R. to R.D., No. 19157 dated the 29th November 1951.

C.G.R. 29-6

C 6

Office of the R.L.A.

Action under section 43 of Land Revenue Code, 1879.

It is not clear from the Agriculture and Forests Departments note what exactly the proposed orders are going to be. In view of R.L.A.'s opinion No. 13693, dated the 28th September 1950, it is clear that Forest Officers cannot exercise the powers under section 43 of the Land Revenue Code; and unless these powers are conferred on them their action under section 43 would be illegal and invalid. This illegality cannot be remedied by executive action and if it is absolutely necessary that the Forest Officers alone should exercise the powers under section 43, they would have to be notified as revenue officers for the districts concerned, as in the case of Divisional Forest Officer, West Nasik. (cf. G.N. 364 of 4-2-1920 at page 107 of Forest Manual, Vol.II).

o/c Sd/- 6/12

Remembrancer of Legal Affairs.

U.R. to A.& F.D.No. 19670, dated the 7th December. 1951.

C.G.R. 29-6

C 5

Office oft he R.L.A.

Under para. 5 of the Provinces and States (Absorption of Enclaves) Order, 1950, the three villages in question came to be administered in all respects as if they formed part of the State of Bombay. Under para. 8 of the Order all laws in force in these villages beofre 25th January 1950 ceased to be in force there, and all laws in force in the State of Bombay came in force. The levy and recovery of land revenue in the villages in question is now governed by the provisions of the Bombay Land Revenue Code, 1879. The levy of Udhat Vighoti on the basis of 15 years recovery of crop share would be inconsistent with the scheme of the Code. There would therefore appear no objection to levying land revenue in the said villages on the basis of the survey assessment carried on by the Limbdi Darbar which was in force upto 1924, till the introduction of settlement as proposed by the Settlement Commissioner.

o/c Sd/- 8/12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 19804 dated the 10th December 1951.

C.G.R. 29-6

C 5

Office of the R.L.A.

The Deputy Secretary, R.D. in the opening part of his note has stated that the Additional Secretary's opinion dated 1st September 1951 has been based on two presumptions which he says are not correct, viz. that (i) the stages of the graduated levy would be completed by the time the second revision takes place; and (ii) that assesses would receive the concession twice if rule 86A is applied again on thesecond revision. There is however nothing in the Additional Secretary's opinion to suggest that it was based on the two presumptions referred to. The main ground for the Additional Secretary's view was that there is no provisionin the Bombay Land Revenue Code or the Land Revenue Rules empowering Government to impose a condition that the benefit of thegraduated levy under rule 86A will be merged into the revision that may be made later on. If a fresh revision takes place the procedure prescribed by rule 86A will have tobe followed de novo. As the rule stands at present there does not appear any way to avoid that. If theproposal made by Deputy Secretary, R.D. is to be given effect to amendment of the Rules will be necessary.

o/c Sd/- 22/12
Remembrancer of Legal Affairs.

U.R. to R.D.No. 120470, dated the 24th December 1951.

C.G. R. 29-6

C 5

Office of the R.L.A.

These papers are referred to R.L.A. with a request to adivse onthe following points in connection with application of section 73A to the merged State areas:

(1) whether original settlements can be deemed to have been introduced for the purposes of section 73-A of the Land Revenue Code; if

(a) survey settlement has already been introduced according to States Rules which have noting in commonwith the provisions of the Land Revenue Code;

(b) survey settlement has been introduced according to State Rules which are ~~base~~ based on theprovisions of the Land Revenue Code.

(c) if reply to (b) is in the affirmative whether the State Rules should be an an exact replica of the provisions of the Bombay Land Revenue Code or whether they may follow the provisions of the Code only broadly;

(d) what difference it would make in respect of settlements made before 1939 and after the passing of the Bombay Act XX of 1939.

(2) will the application of section 73-A to State areas affect the rights of transfer existing in occupants before the Bombay Act, VI of 1901, came into forde.

(3) Generally on the issue involved in the matter of application of section 73-A.

2. The first question that arises for consideration is whether the provisions of section 73-A, which

which places restrictions on transfer of property, are valid vis-a-vis the provisions of the Constitution of India. Sub-section (1) of section 73-A of the Bombay Land Revenue Code x provides :

"Notwithstanding anything in the foregiong section, in any tract or village to which the Provincial Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector."

Under this provision power has been taken by the State Government to prohibit the transfer of occupancies in any tract or village without theprevious sacntion of the Collector. Under Article 13(1) of the Constitution of India, if section 73A(1) of theBombay Land Revenue Code is inconsistent withthe provisions of Part III of the Constitution, it shall to the extent of such inconsistency be xkx xkx void. Article 14 guarenteest o all equality before the law and theequal protection of the laws within the territory of India. This provision is anahogous to the Fourteenth Amendment of the American Constitutionand Professor Willis in his Constitutional Law has stated that "the guarantee of equal protection of the laws under the Fourteenth Amendment of the American Constitution means theprotection of equal laws. It forbids class legislation but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be trested xkkix alike under the like

circumstances and conditions both in privileges conferred and in the liabilities imposed. The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation." A notification issued by Government under section 73A(1) of the Land Revenue Code would prohibit transfer of occupancies in the tract or the village to which it refers. That notification would, therefore, be with reference to the tract or village within which it is to operate and when such notification is issued it will apply to all occupancies within that area and there would be no discrimination. Consequently the guarantee of equality before the law under Article 14 of the Constitution would not be infringed by the issue of such notification under section 73A(1) of the Bombay Land RevenueCode. That provision would involve no breach of article 14 of the Constitution.

3. Under article 19(1)(f) of the Constitution right to acquire, hold and dispose of property is guaranteed. Clause (5) of that article provides :

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on theexercise of any of therights conferred by the said sub-clauses either in the interests of the general public or the protection of the interest of any Schedule Tribe."

It is true that a notification issued under section 73A(1) of the Bombay Land Revenue Code would

* restrict the right of occupants in that area to dispose of their occupancies But that right is not totally prohibited, for with the previous sanction of the Collector, the occupancies in such areas can be transferred Consequently the question relevant would be whether the restriction imposable by a notification under section 73 A(1) of the Bombay Land Revenue Code would be a reasonable restriction

121 to to 123

in the interests of the general public or for the protection of the interests of any scheduled tribe so that article 19(1)(f) is not infringed in any way. The expression "interests of the general public" in clauses (5) and (6) of article 19 differs from the expression "Interests of public order" in clauses (3) and (4). The state would, therefore, be competent to impose restriction under clauses (5) and (6) not only on the ground of social and economic policy but also on the ground of common good (see Basu's Commentary on the Constitution of India, p. 97). The restriction provided under section 73A(1) of the Bombay Land Revenue Code contemplates the economic well being of the occupants in that area for that provision is designed to protect the occupants from the greedy money-lenders, and further apparently the notification under that section in intended to be issued for protecting the illiterate occupants in backward areas. Further, as stated above, the need of sanction of the Collector for disposal of occupancies would not be an unreasonable restriction as the Collector while granting the sanction would scrutinise the nature and the need of the transaction. In the circumstances, it appears that section 73.A(1) of the Bombay Land Revenue Code, which is an existing provision, would be saved by clause (5) of article 19 of the Constitution.

4. Sub-section (2) of section 73 however provides that the State Government may be notification exempt-

(1) any part of a tract or a village,

(2) any person or class of persons.

In the first place the sub-section gives wide discretion to Government and does not lay down any principles to govern such discretion. On that ground its validity is likely to be challenged. But apart from this it

~~apart from this it~~ is necessary to examine that notifications ~~x~~ issued under this sub-section ~~x~~ do not offend against theprovisions of Articles 14 and 15 of the Constitution. It is true that although as ~~sxtx~~ stated above artifle 14 gives a guarantee of equality, it has been held that a reasonable classification would not be objectionable. At thesame time Article 15 prohibits discriminationon the ground of race, religion, caste, theplace of birth or sex, although under clause (4) of theArticle special provision can be made for socially and educationally backward classes.

5. While granting occupancies by Governmen t, it would be quite competent for it to imopse conditions prohibiting the transfer without theprevious sanction of Government or any other authority for Government being theowner of theproperty, it would be within its power to impose such restrictions and ~~it~~ the restrictions thus imposed would not be deemed to be restrictions imposed by any law.

6. Coming to the specific questions referred to the R.L.A., it will be seen that by clause 5 of the Indian States (Application of Laws) Order, 1948, all enactments in force in any Indian State or part thereof and corresponding to the enactment in force in the Province of Bombay and extended to any such State under paragraph 3 of the Order stand repealed. The Bombay Land Revenue Code, 1879, is one of the enactments applied to the States with effect from 28-7-1948; and in the circumstances, any enactment corresponding to the Bombay Land Revenue Code would stand repealed from that date. The proviso to clause 5 of theOrder enacts that the repeal by this order of any enactment shall not affect the validity, invalidity, effect or consequence of any ~~enactmentxshallxnotxaffectxthexvalidityx~~ thing already done or suffered or any right, title, obligation

or liability already acquired, accrued or incurred. By virtue of this proviso survey settlements already effected in the merged States under corresponding laws and the rights of occupants derived thereunder will be saved (cf. also R.L.A.'s opinion No. 15702 dated the4th October 1951); and this would be so whether or not theprovisions of the repealed State laws are similar to the provisions ofthe Bombay Land Revenue Code. It is true that clause 8 of the Indian States (Application of Laws) Order, 1948 provides that notwithstanding anything contained in paragraph 3, the provisions of Chapter V to XI-A of the Bombay Land Revenue Code shall have no effect in any Indian State if such provisions are inconsistent with any rights conferred on the occupants of lands by any enactment in force in any such State immediately before the commencement of Order ~~by~~ or by any instrument having effect by ~~anyxsex~~ virtue of such enactment. This clause, however, merely saved rights acquired by the persons under the State laws and it further impliedly recognized the occupancies and consequently the Survey Settlements, ~~k~~ if any, whereunder they were created. The Bombay ~~May~~ Merged States (Laws) Act, 1950 does not reproduce clause 8 of the Order; but the effect of this omission would be that any rights not recognized under the Bombay Land Revenue Code, 1879, ~~whhch~~ has been applied to the merged areas, would not be available to the occupants. The Survey Settlements would, however, remain unaffected and they must be deemed to have been effected under the Bombay ~~Rx~~ Land [Application of section 73 A of the Land Revenue Code Revenue Code, 1879, would not, therefore, be feasible where survey-settlements have already been introduced. Viewed in this light the other questions raised by Revenue Department donot fall for consideratio

o/c Sd/- 14/12
Remembrancer of Legal Affairs.

U. R. tonR. D.No. 20059, dated 15th December, 1951.

Office of the R.L.A.

In this case, as directed in Government letter dated the 7th October 1950 (page 7 ante) the Collector of Poona evicted the occupant of Survey No. 8/1 of Yervada for having constructed huts on the land and ~~kmx thxm~~ huts on the land and thus made non-agricultural use thereof without obtaining the previous permission of the Collector. The possession of the land was taken over on behalf of Government. There are about 74 huts on the land of which 33 have been leased out by the Mamlatdar to various persons. It is however, possible to lease out the remaining as the tenants (belonging to wandering tribes) are not prepared to execute rent notes. In these circumstances the Collector has raised the question whether it would not be possible for Government to direct the removal of the unauthorized structures under the provisions of section 61 of the Land Revenue Code 1879. The Revenue Department considers that the provisions of section 61 cannot be invoked in cases in which the occupant has been evicted under section 66 of the Code; and that the only remedy in the case would be to evict the tenants occupying the huts if they are unwilling to execute rent-notes. The R.L.A. is requested to advise whether the view expressed by Revenue Department is correct.

Section 61 of the Bombay Land Revenue Code, 1879, provides inter lalia that any person who shall ~~a~~ unauthorizedly enter upon occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated, and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of the Code he is not entitled, or has ceased to be entitled, shall panalized in the manner stated. This section, even as the marginal note shows, applies to the first

first occupation of any unoccupation of any unoccupied land. In the case under consideration, the original occupant Shri H.B. Shroff was evicted from the land under section 66 ~~of~~ for having failed to first obtain the permission of the Collector for making non-agricultural use thereof. He was already the occupant of the land for agricultural purposes. Section 61, as stated by Revenue Department would not, therefore, be attracted in this case. It is true that as stated in R.L.A's opinion No. 8540, dated the 31st May 1951, on the eviction of the occupant the land in question vests in Government, but in view of the orders issued by the Revenue Department in their Circular No. 4808/49, dated 31st May 1950, directing that pending the result of the appeal filed by Government against the decision of the Civil Judge, Senior Division, Kolaba in Civil Suit No. 81/1948, in cases where eviction has been sanctioned unauthorized structures should not be demolished, there would appear to be no alternative but to evict the persons occupying the huts if they are not willing to execute rent-notes as suggested in the concluding portion of the Revenue Department note at page 12 ante.

O/c Sd/- 27/12

Remembrancer of Legal Affairs.

U.R. to R.D., No. 20668, dated the 28th December 1951.

C.G.R. 29-6

C 5

Office of the R.L.A.

In this case theoccupant of S.No.24/4 of Bopodi was granted a sanad dated 8th December 1923 under rule 56(2) of the old Land Revenue Rules in respect of non-agricultural use of the land. The assessmentis guaranteed for a period of fifty years. In 1945 it was noticed that the occupant had erected a temporary shed. The Collector ordered the removal of the shed on 2nd March 1947. In the meanwhile the occupant applied to the Collector for permission to erect two buildings plans in respect of which had been submitted. But permission was refused as the plans did not comply with the 15 feet marginal distance. Sbusequently the occupant demolished the temporary shed erected by him in 1945 and again applied to the Collector in 1948 for permission to erect a building which was planned to leave a 15 feet margin. However without waiting for the Collector's permission he constructed the building. The question is whether the structure can be ordered to be removed. The Collector considers that in the absence of any penalty prescribed in the sanad for the breach of building regulations it would not be possible to take any actionin this case. The R.L.A. is requested to advise.

2. The sanad granted by the Collector of Poona in 1923 merely guarantees the non-agricultural assessment payable by the occupant of S.No.24. No conditions have been attached to the sanad. The land having been already permitted to be used for non-agriculatural purposes the question of penalizing the occupant under section 66 of the Bombay Land Revenue Code, 1879, does not arise. In the absence of anyconditions in the sanadrequiring the holder to obtain the previous permission of the Collector before erecting any structure and prescribing a penalty for failure to obtain such permission, it would not be legally feasible to evict theoccupant or to remove the structure.

o/c Sd/- 28/12
Remembrancer of Legal Affairs.

U.R. to R.D. No. 20732, dated the 29th December 1951.

C.G.R. 30-6-

C 5

23750/17-11-51.

Submitted with reference to R.D. note at p. 3 ante. This is another case in which the same point as in the linked case arises. A sanad under rule 56(2) of the old Land Revenue Rules was granted to the occupant of S.No. 151 of Mali guaranteeing the non-agricultural assessment fixed for a period of fifty years. No conditions have been attached to the sanad. The occupant of the land leased a portion of the land to one Irani who applied to the Collr. for erecting a building to be used as a cafe. The permission was granted; but the lessee erected in addition a partition wall and a "Pan shop" which were not in the sanctioned plan. The question is whether the unauthorized structures (the wall and the pan shop) can be ordered to be recovered. The collector in para; 4 of his letter considers that no action would be possible in this case. The R.L.A. is requested the to advise.

C.G,R. 30-6

C 5

Office of the R.L.A.

The view expressed by the Collector of Poona in paragraph 4 of his letter at page 1 ante is correct. Attention of the Revenue Department is invited to the reply in the linked case.

o/c Sd/- 29/12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 20733, dated the 29th December 1951.

C.G.R. 30-6

C 5